

Message Text

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TO AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS:EIND, CA

SUBJECT: GOC'S INTEREST IN HUD'S SUSPENSION ACTION AGAINST
CANADIAN FIRM

REFS: OTTAWA 252; STATE 266695, 11/11/75; OTTAWA 4113,
10/31/75

1. HUD ADMINISTRATIVE LAW OFFICER ROBERT MALECH HAS
PROVIDED FOLLOWING CHRONOLOGY OF DESCON/HUD DISPUTE.

-- ON DECEMBER 12, 1973 HUD INFORMED DESCON BY LETTER THAT
BECAUSE OF DEFAULT ON CONSTRUCTION CONTRACTS HELD BY DESCON
IN CONNECTION WITH JERSEY CITY AND ST. LOUIS PROJECTS
COMPANY WAS BEING CONSIDERED FOR DEBARMENT. LETTER ALSO
INFORMED DESCON OF ITS RIGHT TO APPEAL THIS QUESTION WITHIN
A SPECIFIED PERIOD OF TIME.

-- IN FEBRUARY 1974 DESCON REQUESTED AND RECEIVED FROM HUD
BOARD OF CONTRACT APPEALS POSTPONEMENT OF ITS DEBARMENT
HEARING PENDING THE OUTCOME OF A PLANNED APPEAL AGAINST THE
HUD DECISION THAT DESCON HAD DEFAULTED ON CONTRACTS.
(SITUATION IS COMPLICATED BY FACT THAT DESCON WAS A SUB-
CONTRACTOR, NOT A PRIMARY CONTRACTOR. FURTHER COMPLICATION
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ARISES FROM FACT THAT DEFAULT AND DEBARMENT ARE SEPARATE,

PARALLEL ADMINISTRATIVE PROCEEDINGS.) GOVERNMENT (HUD) AGREED TO POSTPONEMENT ON THE CONDITION DESCON WOULD BE PLACED UNDER SUSPENSION PENDING THE OUTCOME OF ITS APPEAL OF THE DEFAULT DECISION. THE COMPANY ACCEPTED THE CONDITION, AND THUS SUSPENSION IN THIS CASE AMOUNTED TO A TEMPORARY DEBARMENT. IT WAS VOLUNTARILY AGREED TO, NOT "IMPOSED" AS DESCON CLAIMED TO GOC.

-- IN OCTOBER 1974 DESCON FILED ITS APPEAL IN THE DEFAULT CASE.

-- IN FEBRUARY 1975 THE GOVERNMENT MOVED TO DISMISS THE APPEAL ON PROCEDURAL GROUNDS.

-- IN JULY 1975 THE BOARD OF CONTRACT APPEALS HELD A HEARING ON THE GOVERNMENT'S MOTION TO DISMISS THE APPEAL. IT RULED THAT THE APPEAL ON THE DEFAULT QUESTION SHOULD PROCEED, AND A HEARING WAS SCHEDULED FOR SEPTEMBER.

-- IN SEPTEMBER THE GOVERNMENT SOUGHT AND RECEIVED A POSTPONEMENT OF THE HEARING ON THE GROUND THAT DESCON HAD DEMANDED ADDITIONAL DOCUMENTS AND MORE TIME WAS REQUIRED TO OBTAIN THEM. THE HEARING WAS RESCHEDULED FOR DEC. 8.

-- ON NOVEMBER 18 DESCON FILED ADDITIONAL INTERROGATORIES.

-- ON NOVEMBER 24 THE GOVERNMENT SOUGHT A FURTHER POSTPONEMENT TO ALLOW TIME TO PREPARE ITS RESPONSE TO THE NEW INTERROGATORIES. THE BOARD AGREED AND SCHEDULED THE HEARING FOR MID-JANUARY.

-- ON JANUARY 8, 1976 THE GOVERNMENT REQUESTED AND WAS GRANTED AN ADDITIONAL DELAY UNTIL JANUARY 30 TO PROVIDE ADDITIONAL DOCUMENTS, WITH THE HEARING RESCHEDULED FOR MID-FEBRUARY.

-- IN MID-JANUARY THE HEARING WAS AGAIN POSTPONED UNTIL FEBRUARY 23 BECAUSE DESCON PRESIDENT DAWSON WILL BE IN UNCLASSIFIED

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BRAZIL IN MID-FEBRUARY.

2. WITHOUT COMMENTING ON THE SUBSTANCE OF THE CASE, TWO THINGS SEEM CLEAR.

(A) AT LEAST SOME OF THE REPEATED DELAYS IN HEARING THIS CASE HAVE BEEN AT THE INSTANCE OF DESCON.

(B) A SEPARATE ADMINISTRATIVE LAW BODY, THE BOARD OF CONTRACT APPEALS, HAS RULED ON EACH OF THE MOTIONS FOR

POSTPONEMENT, AND IT IS REASONABLE TO ASSUME THAT DIS-INTERESTED ADMINISTRATIVE LAW BOARD FELT EACH OF THE DELAYS WAS JUSTIFIED, OR AT LEAST UNAVOIDABLE.

3. ON THE BASIS OF THE FOREGOING THE DEPARTMENT SEES NO EVIDENCE OF "HARASSMENT" OR ARBITRARY DELAY IN THIS CASE, AND WE HOPE THIS INFORMATION WILL PUT THE MATTER TO REST. KISSINGER

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